

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT - NORTH
STATE OF NEW HAMPSHIRE

V.

ADAM MONTGOMERY

216-2022-CR-20

216-2022-CR-2372

MOTION IN LIMINE

MARITAL PRIVILEGE

NOW COMES the defendant, Adam Montgomery, by and through counsel, Caroline L. Smith, Esq., and James T. Brooks, Esq., and respectfully requests this Honorable Court order that statements, conversations, letters, text or Facebook Messenger messages or any other communications made between Kayla and Adam Montgomery, or to any other person regarding those communications, are marital confidences and are precluded from trial unless and until the State identifies specific statements it intends to introduce and obtains a pretrial ruling regarding the admissibility. In support of this request, the following is stated:

1. The defendant is charged in Docket #216-2022-CR-20 with Second Degree Assault alleging an assault against Harmony Montgomery between the dates of July 1, and July 22, 2019. In Docket #216-2022-CR-2372, he is charged with Second Degree Murder on December 7, 2019, Falsifying Evidence alleged to be between the dates of December 7, 2019 and March 4, 2020 and Tampering with a Witness alleged to be between the dates of December 7, 2019 and January 4, 2022.
2. Jury selection in this matter is scheduled for February 6, 2024.
3. During all the time periods alleged in the indictments, Adam Montgomery was married to Kayla Montgomery. On or about March 10, 2022, Kayla Montgomery filed a petition for divorce.
4. New Hampshire Rule of Evidence 504 establishes a “husband and wife privilege” and provides that “neither shall be allowed to testify against the other as to any statement, conversation,

letter or other communication made to the other or to another person...” Mr. Montgomery asserts his marital privilege with regard to communications between he and his wife, Kayla Montgomery.

5. To constitute a marital confidence, “the communication at issue must be something confided by one to the other, simply and specially as husband or wife, and not what would be communicated to any other person under the same circumstances.” Key Bank of Maine v. Latshaw, 137 N.H. 665, 672 (1993). The privilege applies in a circumstance that involves a

conversation or act performed by [a spouse] which is attributable to the husband-wife relation, i.e., that which might not be spoken or done openly in public as tending to expose personal feelings and relationships or tending to bring embarrassment or discomfiture to the participants if done outside the privacy of the marital relation

State v. Pelletier, 149 N.H. 243, 247 (2003) (quoting White v. State, 440 S.E.2d 68, 70 (Ga. App. 1994)). It is a “near universal” rule that marital communications are presumed to be confidential. State v. Smith, 384 A.2d 687, 691 (Me. 1978); see also State v. Christian, 841 A.2d 1158, 1170-79 (Conn. 2004) (summarizing law of marital confidences privilege).

6. Kayla Montgomery has made numerous statements regarding her allegations of the cause of death of Harmony Montgomery and what happened to her body afterwards. The charges in Docket #216-2022-CR-2372 are based primarily on her allegations. While Mr. Montgomery asserts that Kayla Montgomery’s allegations supporting the factual allegations contained in the State’s indictments are not true, they are not precluded by the marital privilege based on public policy. See Pelletier at 249.

7. Rather, this motion addresses the multitude of verbal and message communications and exchanges between the Adam Montgomery and Kayla Montgomery during the course of their marriage that do not specifically address the factual allegations in the indictments and complaints that were private communications between the two.

8. “The party offering evidence generally bears the burden of demonstrating its admissibility.” State v. Rice, 169 N.H. 783, 800 (2017)(quotation omitted). If the State seeks to admit communications in violation of the marital confidence or claim that the marital confidence does not apply to particular communications made solely between husband and wife, the State should be required to identify those communications and obtain a pre-trial ruling on each communication.

WHEREFORE, Adam Montgomery respectfully requests this Honorable Court issue an order:

- A) Precluding the introduction of statements, conversations, letters, text or Facebook Messenger messages or any other communications made to the other in private, or to any other person regarding those private communications because admission would violate the marital privilege; or,
- B) Requiring the State to identify communications made in private during the marriage that it seeks to introduce at trial and obtain a pre-trial ruling regarding admissibility; and
- C) For such other relief as the Court deems just.

Respectfully submitted,

/s/ Caroline L. Smith

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CERTIFICATE OF SERVICE:

I hereby certify that a copy of this MOTION IN LIMINE has been forwarded to Senior Assistant Attorney General Benjamin J. Agati and Assistant Attorney General R. Christopher Knowles on this 5th day of January 2024.

/s/ Caroline L. Smith

Caroline L. Smith, Esq.